

⁸ June 2001 Informal Request at 1.

matter.⁹ Arcom contends that the alleged sale of such large numbers of illegal radios raises serious questions about the fitness of both Harvey and Thomas to be Commission licensees, warranting the denial of the instant applications and, at the very least, requiring an investigation by the Commission.¹⁰

3. *Discussion.* Private land mobile radio applications are not subject to the formal procedures associated with petitions to deny as set forth in Section 1.939 of the Commission's Rules.¹¹ Rather, objections to such applications are governed by the Commission's informal request rules set forth in Section 1.41 of the Commission's Rules.¹²

4. We deny Arcom's Informal Requests because they do not raise substantial or material questions of fact that a grant of the applications would be inconsistent with the public interest, convenience, and necessity. With respect to Thomas, it is our understanding that Thomas brought this matter to the Enforcement Bureau's attention before Arcom filed its pleadings, and Thomas promptly took corrective action. After examining these facts and the evidence in this matter, the Enforcement Bureau decided that no enforcement action was warranted under the specific circumstances of this case with respect to Thomas. We have reviewed the record before us, and we find that the allegations contained in Arcom's Informal Requests, even if true, do not raise a substantial or material question of fact warranting designation of the Castillo Communications applications for hearing. Moreover, we believe that our decision with respect to the Informal Requests is buttressed by the Enforcement Bureau's decision that no enforcement action was warranted under the specific circumstances of this case.

5. With respect to Harvey, we note that although Arcom has challenged applications filed both by Castillo Communications and by entities controlled by Thomas,¹³ Arcom's specific factual assertions throughout its pleadings pertain almost entirely to Thomas.¹⁴ We find that the conclusory

⁹ *Id.* Arcom includes in the pleading a letter dated May 18, 2001, from the USVI Government Department of Property and Procurement to the Commission's Enforcement Bureau stating that the Department had become aware that various USVI Government agencies were purchasing two-way radios that did not comply with FCC rules from certain marketing entities. The Property and Procurement Department specifically asked the Enforcement Bureau to investigate the problem. Petition to Deny VI Mobile Communications Application for Renewal of License of Station WNF347, filed by Ralph Addington d/b/a Arcom Communications (filed June 15, 2001), Petitioner's Exhibit 4 (Letter, dated May 18, 2002, from Herbert Schoenbohm, Acting Director, Central Stores Division, Department of Property and Procurement, Government of the Virgin Islands of the United States, to Joseph Casey, Chief, Technical and Safety Division, Wireless Telecommunications Bureau [sic], Federal Communications Commission) at 3-4 n.4, as attached to and incorporated by reference in the *June 2001 Informal Request*.

¹⁰ *June 2001 Informal Request* at 3.

¹¹ 47 C.F.R. § 1.939.

¹² 47 C.F.R. § 1.41. See, e.g., S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153, 8155 ¶ 5 & n.14 (2001); Landlinx Communications, *Second Order on Reconsideration*, 15 FCC Rcd 24932, 24933 ¶ 4 (WTB PSPWD 2000).

¹³ See, e.g., VI Mobile Communications, *Order*, 17 FCC Rcd 22187 (WTB CWD 2002); Bronx Communications, *Order*, 17 FCC Rcd 24532 (WTB PSPWD 2002).

¹⁴ Just as the *October 2001 Informal Request* presents its allegations against Castillo Communications by incorporating by reference the *June 2001 Informal Request* against Castillo Communications, the *June 2001 Informal Request* is based in large part on the incorporation by reference of an attached petition to deny a renewal application filed by VI Mobile Communications, an entity controlled by Thomas. That petition to deny focuses its factual allegations almost entirely on the conduct of Thomas. It addresses Harvey only by noting that both men were mentioned in a USVI Government memorandum discussing this matter, see note 9, *supra*, and by suggesting that the fact that Harvey is listed as the contact representative for the subject applications "demonstrate[s] a close business link between Harvey and Thomas and their various licensed stations, and evidence[s] that the two may be operating their systems and carrying out these alleged activities in concert." Petition to Deny VI Mobile Communications Application for Renewal of License of Station WNF347, filed by Ralph Addington d/b/a Arcom

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reference to Thomas in the USVI Government memo coupled with the fact that Thomas has been listed as a contact representative for the subject applications is an insufficient basis for concluding that Harvey has been involved in the illegal sale of unauthorized radio equipment, either in concert with Thomas or otherwise.¹⁵ We therefore deny Arcom's Informal Requests¹⁶ and refer the captioned Castillo Communications applications to the Public Safety and Private Wireless Division's Licensing and Technical Analysis Branch for further processing in accordance with the applicable Commission rules.

6. *Conclusion.* Arcom has not raised a substantial or material question of fact that a grant of the applications would be inconsistent with the public interest, convenience, and necessity. Consequently, we deny the Informal Requests. The subject applications shall be processed in accordance with the applicable Commission rules.

7. Accordingly, IT IS ORDERED that pursuant to Sections 5(i), 303(r), and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(d), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Petitions to Deny (Informal Requests) filed by Ralph Addington d/b/a Arcom Communications on June 26, 2001 and October 10, 2001, ARE DENIED.

8. IT IS FURTHER ORDERED that applications FCC File Nos. 0000439158 and 0000569210 SHALL BE PROCESSED by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch consistent with this *Order* and the Commission's Rules.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

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Communications (filed June 15, 2001), at 3-4 n.4, attached to and incorporated by reference in the *June 2001 Informal Request*.

¹⁵ The exhibits attached to the Informal Requests include newspaper articles, the USVI Government memo, a letter from a Motorola representative warning about the use of unauthorized radio equipment in Puerto Rico and the USVI, and the letter from the Acting Director, Central Stores Division, Department of Property and Procurement, Government of the Virgin Islands, seeking Commission assistance. We find no probative value in these exhibits with respect to the alleged culpability of Harvey or Castillo Communications. In fact, the only exhibits that even mention Harvey or Castillo Communications are the USVI Government internal memo, which offers no evidence or explanation for its factual assertions, and a newspaper article quoting from the memo. Significantly, the only declaration of Ralph Addington in any of Arcom's pleadings is the one included initially in the petition to deny renewal of the VI Mobile Communications license for Station WNF347, which was incorporated by reference in the Informal Requests against Castillo Communications, but states only that Addington's certification of the factual information therein "is based on [his] review of these materials and [his] reasonable investigation, including [his] personal inspection of numerous non-compliant radios in use in the USVI, and [his] conversations with individuals using these radios who have indicated they were purchased from Mr. Hughroy Thomas." There is no declaration under penalty of perjury from Addington that asserts his personal knowledge of wrongdoing by Harvey.

¹⁶ Arcom also argues that the Commission should initiate an inquiry into this matter pursuant to Sections 308(b) and 403 and of the Communications Act of 1934, as amended, 47 U.S.C. §§ 308(b), 403. *June 2001 Informal Request* at 3. We decline to initiate such an inquiry for the same reasons we deny the Informal Requests in other respects.